Supreme Court, U.S.
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No. 91-918

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

KALAN INC. AND
HOSPITAL CORPORATION OF AMERICA,
Petitioners,

v.

THE UNITED STATES,
Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Federal Circuit

PETITIONERS' REPLY BRIEF

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EDITOR'S NOTE

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PETITIONERS' REPLY BRIEF

In its opposition, the Government does not, as it cannot, refute the showing that the court of appeals has effectively attributed an intent to Congress to be illogical and irrational. Rather, the Government would have this Court ignore the fact that under the court of appeals' reading of the relevant statute, adjudicated overpayments of import duties retained for a relatively short duration (since a time subsequent to the final ascertainment of duties) will result in interest but not if retained for a relatively long duration (since the time of importation).

Essentially, the Government maintains that the "increased or additional duties" upon which interest is payable to the importer under 19 U.S.C. 1520(d) are terms of art in tariff law and signify a congressional intent not to award interest on Customs overcharges made before the final ascertainment of duties. To support this thesis, it refers to old definitions of "increased duties" ("the differences between the estimated duties paid upon entry and any increase of regular duties in the liquidated duties as determined by the collector") and "additional duties" (those duties "which are assessed in addition to the regular duties accruing under the law"). Opposition at 6. The problem with this position is that the tariff laws are replete with instances in which both "additional duties" and "increased duties" are paid at the time of importation.

Even the term "additional duties", as the Government understands it, embraces such duties as antidumping, countervailing, discriminating, and other duties which are paid at the time of importation but which like ordinary duties are subject to increase, decrease, or no change at the time of liquidation.[1] Thus, overcharged "additional duties", just like overcharged "regular duties", can be paid at the time of importation rather than after liquidation. Since the Government's theory rests on the proposition that "increased or additional duties" necessarily means duties paid after liquidation, it obviously must fall of its

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[1] *See, e.g.*, 19 U.S.C. 128, 129, 1303(a)(1), 1338, 1671(a), 1673(a), 2134(a)(2), 2151(a), and 2154(a). *See also* 19 U.S.C. 1202 (Harmonized Tariff Schedule of the United States, Section X, U.S. Note 1; Chapter 99, U.S. Note 1(b) and Subchapter 1 ("Temporary Legislation Providing For Additional Duties")).

own weight. Indeed, even its (1924) definition of "increased duties" manifestly fails to embrace all types of "increased duties", as that term is also used elsewhere in the tariff laws to mean duties paid at the time of importation. *See* 19 U.S.C. 2135(c); *see also* Brief of *Amici Curiae* at 14-17 & n.29 (and authorities cited).[2]

The Government also argues that the construction given to the statute by the court of appeals carries out Congress's intent of providing for a "scheme of reciprocal interest payments [that] is symmetrical." Opposition at 8. Of course, this is fallacious. If, after liquidation, the Customs Service requires an importer to pay supplemental duties, interest will be charged on those duties if unpaid. On the other hand, if the Customs Service overcollects duties at the time of importation (which is when almost all of the overcharges occur) and retains them beyond the date of liquidation for months or years, no interest at all is awarded for the overcharge. This is hardly reciprocity or symmetry; in fact, the Government itself appears to be aware of this, as it concludes its argument with the claim that "even if . . . [the congressional scheme did not operate symmetrically], it would still be the scheme that the courts are bound to enforce." Opposition at 9.

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[2] The *amici* note that even the Customs Service does not use "increased duties" or "additional duties" as terms of art to refer to additional duties due after liquidation. Brief of *Amici Curiae* at 16 n.28. Rather, when Customs issues a bill following liquidation, it seeks what it calls "supplemental duties". *Id. See also* Customs bills to petitioners, copies of which are included in the record of this case and are reproduced as Appendix G, *infra*, 38a-39a.

In short, the court of appeals' counterintuitive view of the law is not defensible. While Congress is free to enact legislation which is not logical, it is certainly not presumed to do so. In attributing what has to be viewed as an undeniably absurd intention to Congress, the court of appeals misread both the legislative history and the statutory language. Because this case is so important—the reach of the court of appeals' troublesome opinions is vast, touching virtually all who import goods into the United States and who choose to adjudicate claims before the Customs Service and the federal courts—this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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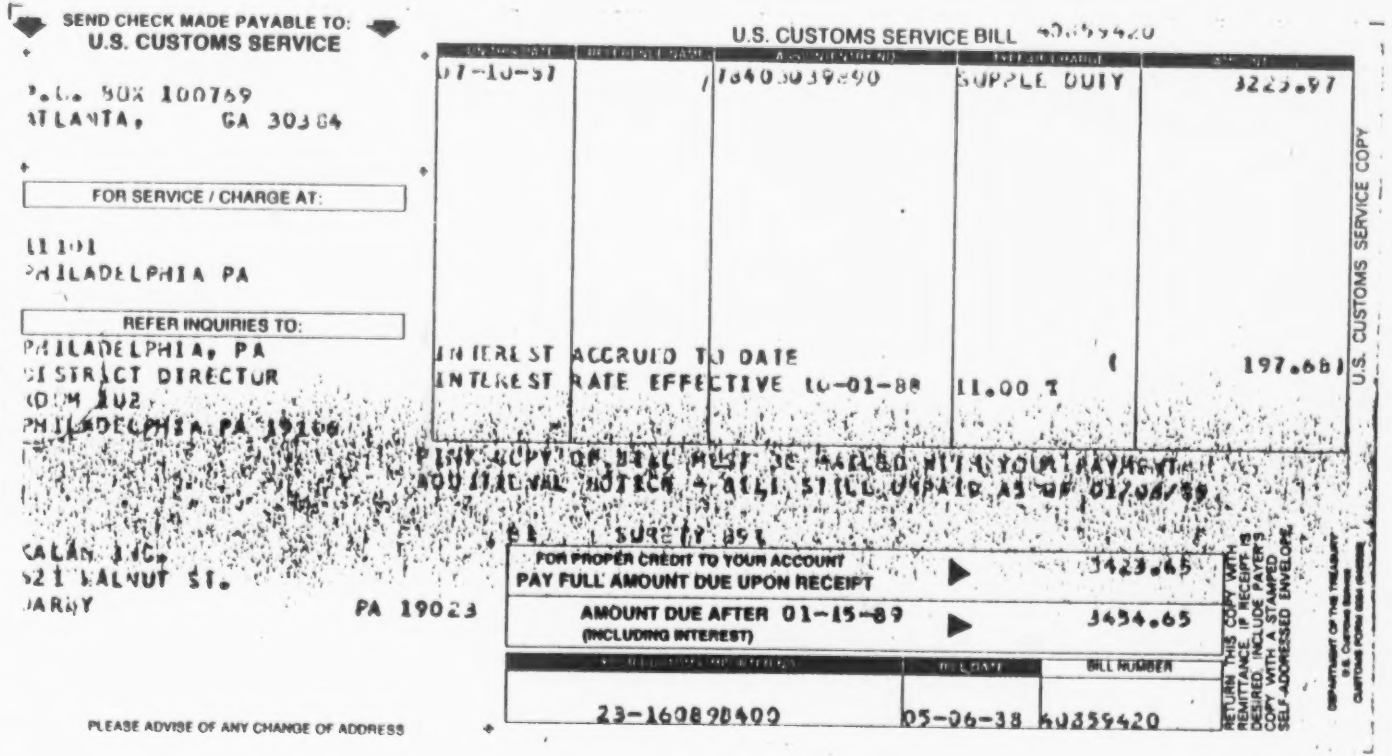
February 1992

APPENDIX

APPENDIX G



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ENTRY DATE	DETAILED DATA	ENTRY NUMBER	TYPE OF CHARGE	AMOUNT
07-10-87		1840039890	SUPPLE DUTY	3223.97
			INTEREST ACCRUED TO DATE	
			INTEREST RATE EFFECTIVE 10-01-88	11.00 %
				197.68

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23-1608980409	05-06-38	60859420

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		PAYMENTS RECEIVED TO DATE	91052.

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0.00 IN INTEREST IS NOW DUE. AFTER
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ONE PARK PLAZA
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TOTAL AMOUNT DUE UPON RECEIPT 1503.
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